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8 UNITED STATES DISTRICT COURT  
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10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 ANDREW WEINSTEIN,

13 Plaintiff,

14 v.

15 KATAPULT GROUP, INC., a Delaware  
corporation; and DOES 1 through 10,  
16 inclusive,

17 Defendants.  
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Case No.: 4:21-cv-05175-PJH

Hon. Phyllis J. Hamilton

**PLAINTIFF'S OBJECTIONS TO  
EVIDENCE SUBMITTED WITH  
DEFENDANT'S REPLY IN  
SUPPORT OF ITS (1) MOTION TO  
COMPEL ARBITRATION AND  
DISMISS, OR ALTERNATIVELY  
STAY, PROCEEDINGS, AND (2)  
REQUEST FOR JUDICIAL NOTICE**

Date: October 7, 2021  
Time: 1:30 p.m.  
Dept.: Courtroom 3 – 3rd Floor  
Ronald V. Dellums Federal  
Building & U.S. Courthouse

Complaint: April 12, 2021  
Removal: July 6, 2021  
Trial: Not Set

1 Plaintiff Andrew Weinstein objects to the following evidence submitted with  
 2 defendant Katapult Group, Inc.’s Reply in support of its Motion to Compel Arbitration and  
 3 Dismiss, or Alternatively Stay, Proceedings and Request for Judicial Notice:

- 4 • Declaration of Derek Medlin, ¶ 3: “I understand that the Plaintiff in this  
 5 matter, Andrew Weinstein, has challenged the authenticity of the 2014 Stock  
 6 Option Plan (‘the Stock Option Plan’). For purposes of authenticating the  
 7 Stock Option Plan, I can state unequivocally that the version of the Stock  
 8 Option Plan that was submitted in connection with Katapult’s July 21, 2021  
 9 Request for Judicial notice is a true and correct copy of the applicable Stock  
 10 Option Plan.”
- 11 • Declaration of Derek Medlin, ¶ 6: “The Stock Option Plan is the also same  
 12 document referenced, and incorporated into, paragraph I.1 of the Advisor  
 13 Agreement.”

14 Weinstein opposed Katapult’s Request for Judicial Notice, in part, because Katapult  
 15 offered no evidence to support its assumption that the “2014 Stock Incentive Plan” it  
 16 presented to the Court as the “Stock Option Plan” is the document referred to by that title  
 17 in the parties’ July 2015 Advisor Agreement. Katapult has attempted to remedy this error  
 18 on reply by presenting testimony of its current Chief Operating Officer, Derek Medlin,  
 19 claiming the two documents are, “unequivocally,” one in the same. Mr. Medlin’s  
 20 testimony is objectionable because it is not based on personal knowledge. Moreover, the  
 21 evidence available to Weinstein suggests it is factually incorrect.

22 Mr. Medlin does not allege he was affiliated with Katapult or its predecessor,  
 23 Cognical, Inc. when that entity entered into the Advisor Agreement with Weinstein in  
 24 2015. Therefore, Mr. Medlin’s claim that the 2014 Stock Incentive Plan attached to his  
 25 declaration is the Stock Option Plan referenced in the Advisor Agreement is not based on  
 26 personal knowledge and is inadmissible for that reason. Fed R. Evid. 901(b)(1) (a  
 27 document may be authenticated by the “Testimony of a Witness with Knowledge”); Fed.  
 28 R. Evid. 602 (“A witness may testify to a matter only if evidence is introduced sufficient to

1 support a finding that the witness has personal knowledge of the matter. Evidence to prove  
2 personal knowledge may consist of the witness's own testimony.”)

3 Weinstein's objection is simply that Mr. Medlin offers no foundation for his further  
4 assumption that this document presented is the same document referred to by a different  
5 name in the Advisor Agreement.

6 Like in its Motion to Compel Arbitration, Mr. Medlin conceals this discrepancy by  
7 referring repeatedly to the 2014 Stock Incentive Plan as the “Stock Option Plan” in his  
8 declaration. This error is not academic or technical. **Exhibit “A”** to Mr. Medlin's  
9 Declaration, which includes the 2014 Stock Incentive Plan as its own “Exhibit L,” also  
10 includes references on page 3 to a “Stock Restriction Agreement” and a “Stock Option  
11 Agreement.” These documents were apparently attached as “Exhibit[s] G-1” and “G-2” to  
12 **Exhibit “A,”** but they are omitted without explanation from the version Mr. Medlin  
13 attaches to his declaration. The missing documents, or similar materials specifically  
14 pertaining to Weinstein, but not referenced in **Exhibit “A,”** are equally plausible  
15 candidates for the “Stock Option Plan” in the Advisor Agreement if such a document even  
16 exists. Katapult cannot preclude this possibility using incomplete exhibits authenticated by  
17 a company representative with no personal knowledge of the Advisor Agreement.<sup>1</sup>

18 To the extent Mr. Medlin's claim that the 2014 Stock Incentive Plan and the Stock  
19 Option plan are the same document is based on information Mr. Medlin learned from  
20 someone else at Katapult, his recitation is inadmissible as hearsay. Fed. R. Evid. 801(c)  
21 (defining hearsay evidence as statements “the declarant does not make while testifying at  
22 the current trial or hearing” and “offer[ed] to prove the truth of the matter asserted in the  
23 statement.”) The business records exception set out in Fed. R. Evid. 803(6) would not, of  
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25 <sup>1</sup> Weinstein was surprised Katapult did not ask Brandon Wright, the CEO of  
26 Cognical, Inc. in July 2015, whether the 2014 Stock Incentive Plan advanced by Katapult  
27 is the Stock Option Plan referenced in the Advisor Agreement. Mr. Wright signed the  
28 Advisor Agreement on behalf of Cognical and is presumably more familiar with its terms  
than Mr. Medlin. Although Mr. Wright no longer works for Katapult, he is easily  
reachable and has been responsive to Weinstein's pre-litigation communications regarding  
this matter.

1 course, apply to information not part of **Exhibit “A,”** including that the 2014 Stock  
2 Incentive Plan was the incorporated into the Advisor Agreement created over a year later.

3 Dated: August 24, 2021

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